IN THE SUPREME COURT OF THE STATE OF DELAWARE

OWEN THOMAS,[1] §	
§	No. 25, 2009
Respondent Below- §	
Appellant, §	
§	Court Below—Family Court
v. §	of the State of Delaware
§	in and for New Castle County
DEPARTMENT OF SERVICES §	File No. 08-09-09TN
FOR CHILDREN, YOUTH AND §	CPI No. 08-30803
THEIR FAMILIES, §	
§	
Petitioner Below- §	
Appellee. §	

Submitted: May 12, 2009
Decided: July 6, 2009

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices

O R D E R

This 6th day of July 2009, upon consideration of the appellant's brief

filed pursuant to Supreme Court Rule 26.1, his attorney's motion to

withdraw, and the responses of the Department of Services for Children,

Youth & Their Families ("DSCYF"), and the Guardian *Ad Litem*, it appears

to the Court that:

(1)   Counsel   for   the   respondent-appellant,   Owen   Thomas

("Father"), filed an appeal from the Family Court's December 17, 2008

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[1] By Order dated January 20, 2009, the Court *sua sponte* assigned a pseudonym to the appellant. Supr. Ct. R. 7(d). In this Order, we also assign pseudonyms to the mother of the minor child and the minor child.

decision and final order terminating his parental rights in his minor child, Daisy. Father's counsel has filed an opening brief and a motion to withdraw. Father has filed a statement of appeal points for consideration by this Court. Both DSCYF and the guardian *ad litem* have moved to affirm the Family Court's judgment. We agree and AFFIRM.

(2) The record reflects that the Family Court granted emergency *ex parte* custody of Daisy to the Division of Family Services ("DFS"), a division of DSCYF, on March 20, 2008, eight days after she was born. Daisy had been born premature and remained in the hospital on a monitor for the first few days of her life.

(3) Both Father and Karen V. Bell ("Mother") appeared at a preliminary protective hearing in the Family Court on March 26, 2008. Both were serving criminal sentences at that time. Mother anticipated being placed in a substance abuse treatment facility in connection with her Superior Court sentence. Father had been sentenced to the Key Program, a substance abuse program for prisoners, and anticipated release later that year to Level III probation. The Family Court ordered paternity testing. Finding probable cause to believe that Daisy was dependent,[2] the Family Court ordered her to remain in the custody of DFS. At that point, DFS's goal was

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[2] Del. Code Ann. tit. 10, § 901(8).

reunification of Daisy with her family. Subsequently, Mother and Father were each appointed counsel and a guardian *ad litem* was appointed for Daisy.

(4) An adjudicatory hearing was held in the Family Court on April 22, 2008. Mother and Father both appeared. Father was in the Key Program at that time. Mother was still incarcerated in connection with her drug sentence. Daisy was adjudicated dependent and remained in foster care.

(5) A dispositional hearing was held on May 22, 2008. Father remained in the Key Program and Mother had entered Gateway, a substance abuse program. Neither Mother nor Father had provided DFS with contact information for relatives who might be able to care for Daisy. The Family Court stressed to the parents the importance of providing contact information for relatives who could care for Daisy. DFS advised that it was in the process of reconsidering whether reunification with her family was the proper goal for Daisy, given the parents' incarcerations and histories of substance abuse. Because reunification remained the goal at the time of the hearing, however, the Family Court ordered DFS to provide Father with a case plan.

(6) On July 8, 2008, DFS filed a motion to suspend visitation based upon the fact that Mother had absconded from Gateway and had incurred

new criminal charges. On July 9, 2008, DFS filed motions requesting the Family Court to permit the goal for Daisy to be changed from reunification to termination of parental rights.

(7) On August 11, 2008, a hearing was held on DFS' motions. Mother and Father, who remained incarcerated, both appeared for the hearing. The Family Court issued an order adjudicating Father to be the biological father of Daisy, based on the previous paternity testing, granted DFS' request to change the goal for Daisy from reunification to termination of parental rights, and granted DFS' motion to suspend visitation. A permanency hearing was scheduled.

(8) On September 10, 2008, the permanency hearing took place. Mother had previously consented to the termination of her parental rights and was not present. Father, who was still incarcerated, appeared at the hearing. Father testified that he intended to begin an anger management class. The Family Court scheduled the termination of parental rights hearing for December 2, 2008.

(9) The termination of parental rights hearing took place on December 2, 2008, as scheduled. Mother was present at the hearing as an observer, pursuant to her request. The following individuals testified: Danielle Stevenson, the DFS investigator; Christy Diffendall, the DFS

treatment worker; Jennifer Uebelher, the DFS permanency worker; Joyce Williams, Father's paternal aunt; Father; and Daisy's foster father. The testimony of the DFS workers established the following. DFS received a hotline referral regarding Daisy six days after she was born. Because Daisy was scheduled to be released from the hospital and both of her parents were incarcerated, DFS placed her in a foster home, where she remains to this day. Despite repeated requests, neither Mother nor Father provided DFS with names of relatives who could provide assistance with Daisy.

(10) In June 2008, Father signed a case plan, which required him to, among other things, obtain employment, find appropriate caregivers for Daisy, complete a parenting class, complete the Key Program, undergo a mental health evaluation, and find safe and stable housing. Father failed to complete his case plan. Father completed a parenting class through Child, Inc., while he was incarcerated. However, once released from incarceration, he quickly violated his probation and was re-incarcerated. He did not remain in the community long enough to find appropriate caregivers for Daisy or find appropriate housing. He did not undergo a mental health evaluation. He also did not request visitation with Daisy during the period of his release. Father has never seen Daisy.

(11) Evidence was presented at the hearing concerning the termination of Father's parental rights with respect to another child, born on April 11, 2004. The Family Court file on that child reflected that the Family Court entered an order on September 16, 2005 terminating Father's parental rights on the ground of failure to plan. Evidence also was presented concerning DFS' efforts to communicate with Joyce Williams, Father's paternal aunt, who had expressed an interest in caring for Daisy. In spite of the late notice of Ms. Williams' interest, the DFS permanency worker met with her to discuss her options with respect to Daisy. Ms. Williams also testified at the hearing. She had never met Daisy and had not spoken with Father for about a year. While she stated that she would be willing to adopt Daisy, she still had not filed a petition for guardianship as of the date of the Family Court's order terminating Father's parental rights. Finally, evidence was presented at the hearing concerning Daisy's current situation with her foster family. The DFS workers testified that she is doing well in her placement and has bonded with her foster parents.

(12) Father testified on his own behalf. His testimony was contradictory in several respects. He stated, on the one hand, that Ms. Williams would be the best caretaker for Daisy, and yet also stated that he wanted custody of Daisy and did not want his parental rights to be

terminated. Father admitted to being arrested for a violation of probation, but stated that his probation officer was trying to help him because he had no place to stay and that his probation officer intended to recommend home confinement and work release to the judge at his violation of probation hearing. Father admitted to a lengthy history of incarceration. He also admitted to having two other children for whom he does not provide support. Father, finally, testified that, prior to his probation violation, he was able to find employment at Wal-Mart and that he had completed an anger management course at the prison, which was taught by the inmates.

(13)   The guardian *ad litem* presented the testimony of Daisy's foster father. He and his wife are residents of Delaware. He is an attorney. His wife left her employment to care for Daisy full-time. According to the foster father, Daisy is in very good physical and emotional health. The foster father and mother are very involved with their church and Daisy attends church regularly with them. Daisy also is very involved with their extended families. The foster father's testimony reflected an intimate knowledge of Daisy and a loving attachment to her.

(14)   Father has submitted several points for consideration by this Court, which may fairly be summarized as follows: a) there was insufficient evidence presented at the hearing to support the termination of his parental

rights; and b) he was not given a reasonable opportunity to comply with the case plan.

(15) The Family Court may terminate parental rights if DSCYF proves by clear and convincing evidence the existence of a statutory basis for termination, and that termination is in the best interests of the child.[3] Where, as here, termination is based upon a failure to plan, DSCYF also must prove by clear and convincing evidence the existence of at least one additional statutory element,[4] and that DSCYF made *bona fide*, reasonable efforts to reunite the family.[5] In this case, DSCYF also sought termination of Father's parental rights based on the ground of a previous involuntary termination.[6]

(16) On appeal from the Family Court's termination of parental rights, this Court will uphold the Family Court's factual findings if they are sufficiently supported by the record and are not clearly wrong.[7] To the extent that the Family Court's rulings implicate questions of law, this Court's standard of review is de novo.[8] This Court will not disturb

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[3] *Shepherd v. Clemens*, 752 A.2d 533, 536-37 (Del. 2000); Del. Code Ann. tit. 13, § 722.
[4] Del. Code Ann. tit. 13, § 1103(a) (5).
[5] *In re Hanks*, 553 A.2d 1171, 1179 (Del. 1989).
[6] Del. Code Ann. tit. 13, § 1103(a) (6).
[7] *In re Stevens*, 652 A.2d 18, 23 (Del. 1995).
[8] *In re Heller*, 669 A.2d 25, 29 (Del. 1995).

inferences and deductions that are supported by the record and that are the product of an orderly and logical deductive process.[9]

(17) We have reviewed the record, including the transcript of the Family Court hearing, in detail and conclude that there is clear and convincing evidence in the record supporting the Family Court's finding that Father failed to plan for Daisy's physical needs or mental and emotional health and development.[10] Moreover, there is clear and convincing evidence in the record supporting the Family Court's finding of at least one other required statutory factor for termination of parental rights.[11] We also conclude that there is clear and convincing evidence in the record supporting the Family Court's finding of a previous involuntary termination.[12] We further conclude that the record supports the Family Court's finding that DSCYF made *bona fide*, reasonable efforts to reunify Father with Daisy.[13] Finally, we conclude that the Family Court properly determined, based upon a detailed weighing of the statutory best interests factors, that termination of Father's parental rights was in Daisy's best interests.[14] In light of the above,

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[9] *Solis v. Tea*, 468 A.2d 1276, 1279 (Del. 1983).
[10] Del. Code Ann. tit. 13, § 1103(a) (5).
[11] Id..
[12] Del. Code Ann. tit. 13, § 1103(a) (6).
[13] *In re Hanks*, 553 A.2d 1171, 1179 (Del. 1989).
[14] Del. Code Ann. tit. 13, § 722.

we find that Father's claims of insufficiency of the evidence and inadequate opportunity to comply with the case plan to be without merit.

NOW, THEREFORE, IT IS ORDERED that the motions of the guardian *ad litem* and DSCYF are GRANTED. The judgment of the Family Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

<u>/s/ Myron T. Steele</u>
Chief Justice